



February 16, 2007

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## SENATE BILL No. 311

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DIGEST OF SB 311 (Updated February 14, 2007 3:29 pm - DI 106)

**Citations Affected:** IC 31-9; IC 31-34.

**Synopsis:** Placement of alleged child in need of services (CHINS). Requires a court to consider placing a child with a de facto custodian or stepparent before considering an out-of-home placement when a child alleged to be a child in need of services is taken into custody.

**Effective:** July 1, 2007.

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**Hershman**

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January 11, 2007, read first time and referred to Committee on Judiciary.  
February 15, 2007, reported favorably — Do Pass.

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SB 311—LS 7208/DI 110+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 311

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 31-9-2-35.5, AS AMENDED BY P.L.145-2006,  
2 SECTION 186, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2007]: Sec. 35.5. "De facto custodian", for  
4 purposes of IC 31-14-13, ~~and~~ IC 31-17-2, **and IC 31-34-4**, means a  
5 person who has been the primary caregiver for, and financial support  
6 of, a child who has resided with the person for at least:  
7 (1) six (6) months if the child is less than three (3) years of age;  
8 or  
9 (2) one (1) year if the child is at least three (3) years of age.  
10 Any period after a child custody proceeding has been commenced may  
11 not be included in determining whether the child has resided with the  
12 person for the required minimum period. The term does not include a  
13 person providing care for a child in a foster family home (as defined in  
14 IC 31-9-2-46.9).  
15 SECTION 2. IC 31-34-4-2, AS AMENDED BY P.L.145-2006,  
16 SECTION 290, IS AMENDED TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) If a child alleged to be a child

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in need of services is taken into custody under an order of the court under this chapter, the court shall consider placing the child with a:

- (1) suitable and willing blood or **an** adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling;
- (2) **de facto custodian; or**
- (3) **stepparent;**

before considering any other out-of-home placement.

(b) Before placing a child in need of services with a blood relative or an adoptive relative caretaker, **a de facto custodian, or a stepparent**, the court may order the department to:

- (1) complete a home study of the relative's home; and
- (2) provide the court with a placement recommendation.

(c) Except as provided in subsection (e), before placing a child in need of services in an out-of-home placement, including placement with a blood or an adoptive relative caretaker, **a de facto custodian, or a stepparent**, the court shall order the department to conduct a criminal history check of each person who is currently residing in the location designated as the out-of-home placement.

(d) Except as provided in subsection (f), a court may not order an out-of-home placement if a person described in ~~subsection (c)(1) or (c)(2)~~ **subsection (c)** has:

- (1) committed an act resulting in a substantiated report of child abuse or neglect; or
- (2) been convicted of a felony listed in IC 31-27-4-13 or had a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult.

(e) The court is not required to order the department to conduct a criminal history check under subsection (c) if the court orders an out-of-home placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(f) A court may order an out-of-home placement if:

- (1) a person described in ~~subsection (c)(1) or (c)(2)~~ **subsection (c)** has:

- (A) committed an act resulting in a substantiated report of child abuse or neglect; or
- (B) been convicted or had a juvenile adjudication for:
  - (i) reckless homicide (IC 35-42-1-5);
  - (ii) battery (IC 35-42-2-1) as a Class C or D felony;
  - (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
  - (iv) arson (IC 35-43-1-1) as a Class C or D felony;
  - (v) a felony involving a weapon under IC 35-47 or

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- 1 IC 35-47.5 as a Class C or D felony;  
 2 (vi) a felony relating to controlled substances under  
 3 IC 35-48-4 as a Class C or D felony; or  
 4 (vii) a felony that is substantially equivalent to a felony  
 5 listed in items (i) through (vi) for which the conviction was  
 6 entered in another state; and  
 7 (2) the court makes a written finding that the person's commission  
 8 of the offense, delinquent act, or act of abuse or neglect described  
 9 in subdivision (1) is not relevant to the person's present ability to  
 10 care for a child, and that the placement is in the best interest of  
 11 the child.  
 12 However, a court may not order an out-of-home placement if the person  
 13 has been convicted of a felony listed in IC 31-27-4-13 that is not  
 14 specifically excluded under subdivision (1)(B), or has a juvenile  
 15 adjudication for an act that would be a felony listed in IC 31-27-4-13  
 16 if committed by an adult that is not specifically excluded under  
 17 subdivision (1)(B).  
 18 (g) In making its written finding under subsection (f), the court shall  
 19 consider the following:  
 20 (1) The length of time since the person committed the offense,  
 21 delinquent act, or abuse or neglect.  
 22 (2) The severity of the offense, delinquent act, or abuse or neglect.  
 23 (3) Evidence of the person's rehabilitation, including the person's  
 24 cooperation with a treatment plan, if applicable.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 311, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 311 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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